

Ref: CHI/21UD/LDC/2006/0032

**LEASEHOLD VALUATION TRIBUNAL**  
FOR  
SOUTHERN RENT ASSESSMENT PANEL

**DETERMINATION IN RESPECT OF**  
**HELENA COURT PEVENSEY ROAD ST LEONARDS ON SEA EAST SUSSEX**

**Applicant:** HELENA COURT RESIDENTS ASSOCIATION LIMITED

**Respondents:** MR J DUNLOP AND OTHERS

**Hearing:** 6 FEBRUARY 2007

**Appearances:** MR OKIMES (ARKO PROPERTY MANAGEMENT LTD) (for  
the applicant)

**Members of the Leasehold Valuation Tribunal:**

MR M A LOVEDAY BA(Hons) MCI Arb, barrister

MR R ATHOW FRICS MRIPM

1. This is an application under s.20ZA of the Landlord and Tenant Act 1985 to dispense with consultation requirements in respect of major works. The applicant is the freehold owner of Helena Court Pevensey Road St Leonards on Sea, and, as its name suggests, it is a company owned by the residential leaseholders. The respondents are the lessees of the 16 flats within the building. A hearing was held on 6 February 2007 at the conclusion of which the Tribunal gave an oral decision in accordance with regulation 18(2) of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003. The Tribunal allowed the application for the reasons given below.
2. The Tribunal inspected the property immediately before the hearing. Helena Court is located in a residential part of St Leonards and comprises a brick built block c.1900 on 3 storeys plus basement. It appears to have been converted from an institutional building or a large house at some stage. The Tribunal inspected two flats. Flat 14 is in the basement to the front of the building in good decorative condition. The internal wall between the main hallway and the living room is formed by a large brick arch which was originally a large fireplace (presumably the main kitchen of the old building). This arch has been filled with a stud partition and plastered. The living room had been completely redecorated recently. Flat 3 is on the ground floor immediately above flat 14. In the hallway is a cupboard with a water cylinder and timber floorboards which appears to be in the position corresponding to the brick arch below. There is severe but historic damp staining to the upper surfaces of the floorboards beneath the cylinder.
3. The applicant was represented at the hearing by Mr Okines of the managing agents Arko. The respondents were not represented, although written submissions were received for or on behalf of the lessees of flats 7 and 8.
4. Mr Okines stated that he had been in professional property management for 3 years and had been a builder for 20 years before that. In 2006, the washing machine in flat 3 sprang a leak and a flood caused part of the living room ceiling to flat 14 to collapse. The remedial works were started in August 2006 by contractors Clark and Webber, the cost

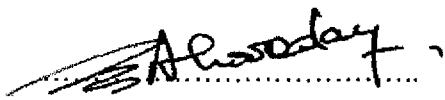
being met by insurers. During the course of the works, the contractors removed the suspended ceiling plaster and discovered dry rot in the floorboards and joists. It appeared that the water cylinder for flat 3 had been leaking for a long time but the effect had been hidden under the plasterboard ceiling. Since Clark and Webber were already on site, they were asked to provide an estimate to reinstate that part of the ceiling affected by the rot.. On 15 August 2006 gave a written estimate for £2,500 + VAT. Mr Okines informed the insurers on 21 August 2006 and brought in a specialist dry/wet rot contractor Mr Ted Heasmer to inspect. On 22 August Mr Heasmer stated that the rot had only gone downwards from the basement ceiling rather than upwards into the flat above. He confirmed that the rot would have to be treated before the ceiling was reinstated and gave an oral estimate for chemical treatment irrigation and injection of £300-£400 + VAT (in addition to the Clark and Webber estimate) and he offered a guarantee. At that stage, the entire cost was still under the threshold for consultation under s.20. He discussed the matter with the directors of the applicant (who were of course also lessees) and they approved this.

5. In September, Mr Okimes was on annual leave. While away, he was telephoned by Mr Nick Clark of the contractors. He said that the rot had spread further into the joists wallplates and brickwork down to the floor in the hallway of the basement flat. The cost would increase. He authorised the extra works bearing in mind that the works had started and that the occupier of the basement flat was still in alternative accommodation. The work was completed by the time he returned from leave on 18 September 2006. On his return, Mr Okimes informed the directors and they had a meeting shortly afterwards to discuss matters. He explained what had happened and they authorised the extra works retrospectively.
6. On 22 September Clark and Webber rendered a final invoice for £7,402.50 (incl VAT). The bill from Mr Heasmer was £430 (incl VAT). Mr Okimes stated that in his own feeling was that the estimated figures from the contractors were 'slightly loaded' (i.e. high). However, the alternative to authorising the extra works had been to delay them by another 2-3 weeks to obtain alternative estimates and availability for other contractors –

and the delay could easily be much longer. The cost was being met from the reserve fund rather than additional service charges and the bill was paid by return. The lessees were informed in October 2006 that this was being done, and none objected at the time. However, the protective application was made because one lessee had not paid their service charges.

7. On 14 January 2007, Ms Marie-Therese Duffin sent representations to the Tribunal on behalf of Mr. SG Duffin, the lessee of flat 7 (top floor). However, on 15 January 2007, Messrs Meneer Shuttleworth SOLICITORS confirmed in writing on behalf of Mr Duffin to say he would not contest the application. On 22 January, Ms Zena Davies sent representations to the Tribunal on behalf of Lucette Davies, the lessee of flat 8. Both sets of representations raised matters in respect of the flooding to the top floor of the premises. The Tribunal was therefore unable to derive any assistance from these representations.
8. The Tribunal is satisfied that it is reasonable to dispense with the consultation requirements in this instance. There was a reasonable explanation for initially failing to operate the s.20 consultation process – namely that the estimated cost of the works was below the threshold. The subject of the works was urgent to prevent further spread of rot. The Tribunal accepts that once the additional work was identified, it was not practical to consult extensively as required by the regulations. To employ other contractors would have required re-tendering the extra works and this would have led to delays and possible extra costs. This was particularly important since the occupant of the basement flat was in temporary accommodation. The additional costs are not substantial. The lessees were consulted in part via the Director/leaseholders. There is no evidence of the lessees being significantly prejudiced. Mr. Okines quite fairly accepted that the costs may have been higher in these circumstances, but this was outweighed by the other factors above. Finally, there was no substantial objection to the application by any of the lessees.
9. The Tribunal would have preferred to have been presented with the original report from Mr Heasmer giving details of his findings. Furthermore, it will be open to the

respondents to contend that the cost of the works is not reasonable in the event that an application is made under s.27A of the Landlord and Tenant Act 1985 once service charges are demanded. However, the Tribunal orders under s.20ZA of the Landlord and tenant Act 1985 that all the consultation requirements be dispensed with in relation to the qualifying works of rot treatment carried out in 2006 (including both the costs of Clark and Webber and Mr Heasmer).

A handwritten signature in black ink, appearing to read 'M. Loveday', written over a dotted line.

Mark Loveday BA(Hons) MCI Arb  
Chairman

Dated: 6 March 2007